

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BITMANAGEMENT SOFTWARE GMBH,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 16-840 C

Senior Judge Edward J. Damich

**DEFENDANT’S OBJECTIONS AND PROPOSED CROSS-DESIGNATIONS TO  
PLAINTIFF’S MOTION TO DESIGNATE DEPOSITION TESTIMONY**

Pursuant to the Court’s Trial Preparation Order (TPO), Defendant the United States (the Government) hereby submits its cross-designations and objections in response to Plaintiff’s Motion for Leave to Present Testimony of Defendant’s 30(b)(6) Representatives Through Deposition. See ECF 40 (TPO); ECF 64 (Motion). In its Motion, Plaintiff Bitmanagement Software GmbH (Bitmanagement) sought to designate portions of the deposition transcripts of Alex Viana (Viana) and Patrick Samuel Chambers (Chambers), taken pursuant to Rule 30(b)(6) of the Rules of the Court of Federal Claims (RCFC).<sup>1</sup>

The Government objects to Bitmanagement’s deposition transcript designations for several reasons. First, Bitmanagement’s designations are unnecessary. Both Viana and Chambers are available to testify during the trial and the Government intends to call both witnesses during its case-in-chief. See generally RCFC 32(a)(4). Second, Bitmanagement’s designations are unnecessarily burdensome. Bitmanagement designated 139 portions of Viana’s RCFC 30(b)(6) testimony and 171 portions of Chambers’s RCFC 30(b)(6) testimony. Third,

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<sup>1</sup> For reference, the Government has attached Bitmanagement’s RCFC 30(b)(6) notice, the Government’s objections and responses to Bitmanagement’s topics, and the Government’s witness designations. See A1-6 (notice); A7-24 (objections and responses); A25 (designations).

many of Bitmanagement's designations are based on improper and objectionable questions. See RCFC 32(b). For example, many of Bitmanagement's deposition questions called for legal conclusions, but "legal conclusions given during a 30(b)(6) deposition are generally not binding on the deponent entity." King v. United States, 119 Fed. Cl. 277, 285 (2014) (citing AstenJohnson, Inc. v. Columbia Gas. Co., 562 F.3d 213 (3d Cir. 2009)); see also A9, 16-21 (objecting on this basis). Similarly, many of Bitmanagement's deposition questions called for testimony outside of the scope of the designated RCFC 30(b)(6) topics. Any such testimony is not binding on the Government. See King, 119 Fed. Cl. at 284-85. The Government identified its specific objections to portions of the designated testimony in the table below.

Finally, the Government's cross-designations are necessary to render the designations complete and provided so as to be considered with the designations as required by Rule 106 of the Federal Rules of Evidence. See FRE 106; see also RCFC 32(a)(6). The Government identified its proposed cross-designations in the table below.

**I. ALEX VIANA RCFC 30(b)(6) DEPOSITION (DEC. 7, 2017)**

Bitmanagement's Designation for Viana	Government Cross-Designation	Government Objection
5:2-10	5:2-10	
6:19-22		
7:6-13		
7:16-23		
8:4-12		
12:9-14:2		
14:22-15:16		
16:4-17:9		
17:19-18:25	18:14-19:15	
19:16-20:5	24:21-25:4 25:24-26:13	
20:15-25		
21:24-22:10		
23:4-10		
26:23-24		

Bitmanagement's Designation for Viana	Government Cross-Designation	Government Objection
27:2-32:18		
33:5-23		
34:3-35:4		
35:16-18		
36:2-25		
37:20-38:5		
38:8-15		
39:7-24		40:10-24 – Foundation; Hearsay
40:14-21		40:10-24 – Foundation; Hearsay
40:23-41:14		40:10-24 – Foundation; Hearsay
40:6-12		
41:20-42:7		
42:10-16		42:5-11 – Calls for legal conclusion
43:11-20		
44:10-45:8		
45:13-24		
46:9-17		46:14-21 – Calls for speculation
46:20-48:19		
48:22-49:6		
49:13-51:10		
51:25-54:16		
55:7-57:4		
57:7-17		
58:3-60:6		
60:16-61:15	60:22-62:8	
62:16-24		
63:3-22	63:3-65:17	
64:6-68:13		
68:25-69:23		69:21-70:8 – Calls for legal conclusion
70:2-5		69:21-70:8 – Calls for legal conclusion
70:7-20		69:21-70:8 – Calls for legal conclusion 70:18-72:20 – Calls for legal conclusion
70:22-71:3		70:18-72:20 – Calls for legal conclusion
71:15-21		70:18-72:20 – Calls for legal conclusion
71:5-13		70:18-72:20 – Calls for legal conclusion
72:12-20		70:18-72:20 – Calls for legal conclusion
72:3-6		
73:11-13		73:11-13 – Foundation; Calls for Speculation; No testimony identified
74:3-7		
74:10-75:10		75:8-16 – Calls for legal conclusion
75:13-19		75:17-23 – Foundation

Bitmanagement's Designation for Viana	Government Cross-Designation	Government Objection
75:21-76:3		75:17-23 – Foundation
76:5-78:2		77:12-78:7 – Calls for legal conclusion
78:5-20		
79:14-80:13		
81:8-10		81:8-13 – Calls for legal conclusion; Asked and answered
81:13-82:13		81:8-13 – Calls for legal conclusion; Asked and answered
82:17-23		82:21-84:9 – Calls for legal conclusion
83:10		82:21-84:9 – Calls for legal conclusion
83:12-15		82:21-84:9 – Calls for legal conclusion
84:2-9		82:21-84:9 – Calls for legal conclusion
84:21-85:22		
85:25-86:22		
87:22-88:10		
88:12-17		
88:20-89:4		
89:10-20	89:5-20	
90:14-16		90:14-91:9 – Calls for legal conclusion
90:19-22		90:14-91:9 – Calls for legal conclusion
91:8-9		90:14-91:9 – Calls for legal conclusion
91:19-20		
91:22-92:2		
92:13-20	92:13-93:16	
93:17-94:17		
94:20-95:23		95:20-96:3 – Calls for legal conclusion
96:2-19		95:20-96:3 – Calls for legal conclusion
97:20-98:4		97:24-98:6 – Mischaracterizes
98:6		
99:6-100:21	100:9-101:11	
100:23	100:9-101:11	
101:12-103:8	102:18-103:8	
103:15-25		
104:19-105:8	105:5-13	
105:14-19		105:14-106:5 – Calls for legal conclusion
105:22-24		105:14-106:5 – Calls for legal conclusion
106:2-12		105:14-106:5 – Calls for legal conclusion
106:25-107:15		
107:17-108:4		
108:16-17		
108:20-109:2		
108:6		

Bitmanagement's Designation for Viana	Government Cross-Designation	Government Objection
109:4-22		
110:8		
110:13-111:20		
111:25-112:19		
112:23-113:5		
114:10-115:2		
115:18-119:2	115:3-24 117:20-118:19	
120:8-17		
120:20-121:5		120:25-122:13 – Calls for legal conclusion; Foundation
121:22-122:10		120:25-122:13 – Calls for legal conclusion; Foundation
122:13		120:25-122:13 – Calls for legal conclusion; Foundation
124:4-9		
124:17-23		
125:4-20		
126:20-127:7		
128:22-129:12		127:16-130:8 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
129:25-130:8		
131:6-14		
132:16-18		
132:24-134:5		
134:7-11		
134:19-137:19		
137:22-138:19		
138:22-141:8		
141:15-142:20	141:9-21	
142:25-143:10	142:25-144:11	
143:15-145:4	142:25-144:11	
145:18-146:14		
148:15-22	147:19-150:2	
151:6-14		
153:8-11		
154:16-22		
155:15-21	156:21-25	
157:14-158:3		
158:14-15		
158:22-25	158:16-159:2	
160:9-162:11		

Bitmanagement's Designation for Viana	Government Cross-Designation	Government Objection
162:18-163:2		
164:5-12		
165:11-14		
165:25-166:5	165:25-166:5	
166:17-168:7	166:17-167:4	
169:2-19		
170:10-13		170:10-13 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
171:14-172:8	170:20-171:11	

## II. PATRICK SAMUEL CHAMBERS RCFC 30(b)(6) DEPOSITION (DEC. 14, 2017)

Bitmanagement's Designation for Chambers	Government Cross-Designation	Government Objection
9:1-3	9:1-12	
9:10-12	9:1-12	
10:20-23		
11:15-23		
11:5-12		
12:3-17		
13:19-24		
13:9-14		
19:25-20:12		
21:6-17		
23:23-24:11		
25:2-6		
25:20-26:19		26:16-21 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
26:21		26:16-21 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
26:23-27:11		
29:19-25		
30:4-24		
31:3-23		
32:2-19		
34:2-11		
34:25-35:17		
35:25-36:3		
36:11-20	36:11-38:16	
36:25-37:6	36:11-38:16	

Bitmanagement's Designation for Chambers	Government Cross-Designation	Government Objection
37:10-12	36:11-38:16	
42:1-7	42:1-7	
43:4-44:4	43:1-50:21	
44:11-12	43:1-50:21	
45:9-17	43:1-50:21	
46:17-47:2	43:1-50:21	
47:9-16	43:1-50:21	
48:17-20	43:1-50:21	
48:8-11	43:1-50:21	
49:8-14	43:1-50:21	
50:1-4	43:1-50:21	
50:11-21	43:1-50:21	
52:19-53:5	52:19-53:23	
53:24-54:5		
54:11-55:4		
55:21-56:6		
56:13-23		
59:7-11	59:7-61:18	
60:8-14	59:7-61:18	
60:17-62:12	59:7-61:18	
62:19-64:25		
65:14-24		
66:11-67:14	67:15-68:11	
68:12-15	67:15-68:11	
70:8-16	40:5-41:22 70:8-77:9	
72:17-22	40:5-41:22 70:8-77:9	
73:11-22	40:5-41:22 70:8-77:9	
74:23-75:11	40:5-41:22 70:8-77:9	
75:18-22	40:5-41:22 70:8-77:9	
76:7-17	40:5-41:22 70:8-77:9	
76:23-77:9	40:5-41:22 70:8-77:9	
78:3-15	78:3-79:16	
78:19-79:16	78:3-79:16	
80:10-16		
80:21-81:15		

Bitmanagement's Designation for Chambers	Government Cross-Designation	Government Objection
81:18-21		
82:5-21		
83:10-17		
83:19-85:23	83:24-85:21	
85:25-86:21		
88:6-89:25		
90:5-15		
90:22-91:8	90:22-93:3	
91:23-25	90:22-93:3	
92:24-93:3	90:22-93:3	
94:18-20	93:15-98:22	
95:2-11	93:15-98:22	
95:25-96:3	93:15-98:22	
100:3-101:10		
101:15-22		101:15-104:23 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
102:17-103:7		101:15-104:23 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
103:21-23		101:15-104:23 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
104:2-15		101:15-104:23 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
104:17		101:15-104:23 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
104:19-20		101:15-104:23 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
104:22-23		101:15-104:23 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
105:17-106:6		
105:8-14		
107:18-20		
108:10-21	108:10-109:12	
109:6-8	108:10-109:12	
111:5-112:10	111:5-115:16	
112:15-115:11	111:5-115:16	
115:23-116:2		
117:22-24		
118:21-23		
118:5-12		
119:3-11		
120:2-121:1		120:22-121:2 – Compound; Mischaracterizes
121:10-122:10	121:10-125:22	



Bitmanagement's Designation for Chambers	Government Cross-Designation	Government Objection
122:12-17	121:10-125:22	
122:24-123:25	121:10-125:22	
124:7-15	121:10-125:22	
127:14-22	126:11-127:22	
128:1-3		
128:11-130:8	128:11-134:9	
130:16-131:7	128:11-134:9	
131:17-132:24	128:11-134:9	
143:5-9		
144:12-23		
145:15-146:7	145:15-148:15	
147:2-14	145:15-148:15	
148:18-24		
149:5-150:11		150:7-15 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition; Foundation
150:14-15		
151:23-153:17		
154:1-6		
154:16-155:6		
155:1-17		
155:19-24		
156:2-22		
157:15-158:17		158:11-159:22 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
158:20-159:15		158:11-159:22 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
159:20-22		158:11-159:22 – Beyond the scope of the designated RCFC 30(b)(6) topics for deposition
159:24-160:2		
161:9-164:19		
165:19-24		
165:8-10		
166:1-167:15	166:1-168:19	
168:15-19	166:1-168:19	
169:1-14		
170:5-8		
170:12-19		
170:22-171:4	170:22-171:17	
172:25-173:21		
173:23		
173:25-174:23	173:25-176:11	
175:5-176:11	173:25-176:11	

Bitmanagement's Designation for Chambers	Government Cross-Designation	Government Objection
177:15-22		
178:23-179:10		
180:14-19	179:5-182:3	
181:22-182:3	179:5-182:3	
181:8-11		
182:19-183:6		
182:9-12		
183:23-184:7	183:23-184:12	
184:13-185:5		
185:10-20		
186:1-187:11		
187:15-24		
188:16-18		
188:23-189:5	188:23-191:13	
189:7	188:23-191:13	
189:9-10	188:23-191:13	
190:15-191:13	188:23-191:13	
191:15-192:8		
192:24-193:10		
193:24-194:2		
194:6-14		
194:23-195:3		
195:17-196:6		
196:10-197:21	197:17-201:1	
198:18-199:11	197:17-201:1	
200:11-14	197:17-201:1	
201:2-202:15	201:22-202:23	
205:14-21	204:12-210:18	
208:2-5	204:12-210:18	
208:11-18	204:12-210:18	
210:9-21	204:12-210:18	210:19-22 – Vague as to “important”
210:24-211:20		
212:7-14		
213:16-21		
214:7-216:7	214:7-218:7	
216:9-20	214:7-218:7	
219:13-18	219:13-220:9	
219:25-220:4	219:13-220:9	

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

GARY L. HAUSKEN  
Director

Of Counsel:  
PATRICK C. HOLVEY  
Department of Justice

RICHARD J. HUBER  
ANDREW P. ZAGER  
Department of the Navy

s/Scott Bolden  
SCOTT BOLDEN  
Deputy Director  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
Washington, DC 20530  
Email: [Scott.Bolden@USDOJ.gov](mailto:Scott.Bolden@USDOJ.gov)  
Telephone: (202) 307-0262  
Facsimile: (202) 307-0345

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*Attorneys for Defendant the United States*